IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1720 OF 2006

Pritam Vasant Thakur & Anr. ...Petitioners

V/s.

State of Maharashtra & Anr. ...Respondents

Mr.Ganesh Gole for Petitioners.
Mr.Y.M. Nakhawa APP for the State.
Mr.Deepak Jadhav for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : 4th SEPTEMBER, 2007.

P.C:-

1. This petition has been filed by the Petitioners who were appearing on behalf of one Dinesh Shinde against whom matrimonial proceeding was filed by his wife, the Respondent No.2 in the Family Court, Bandra. A criminal complaint was also filed against Dinesh Shinde by the Respondent No.2 U/s.498-A of IPC.

2. An application was made by the Respondent No.2 to the District Court, Thane seeking transfer of her case which was pending in the Court of JMFC, Thane to JMFC at Vasai. In the said application, various allegations have been made against the Petitioners who were

appearing on behalf of the husband of the Respondent No.2/complainant. While allowing the application for transfer, the Joint District Judge, Thane has observed as under:-

> "3) Serious allegations are made against them and their lawyers. These allegations have gone unchallenged. I am, therefore, inclined to believe them....."

and, thereafter, allowed the application for the transfer.

3. Learned counsel for the Petitioners submitted that the Petitioners were not challenging the order of transfer of the case which was passed by the Joint District Judge, Thane but they are aggrieved by the observations which are made by the learned Joint District Judge while allowing the transfer application which was filed by the Respondent No.2. He submitted that these observations were made without giving an opportunity to the Petitioners to rebut the said allegations.

4. Learned counsel for the Respondent No.2, on the other hand,

submitted that no prejudice would be caused to the Petitioners as a result of said observations which are made by the Joint District Judge. He submitted that though notice was served on the Petitioners, they chose not to appear before the Joint District Judge.

5. In my view, submissions made by the Petitioners has to be accepted. It is no doubt true that the Joint District Judge merely has stated that the allegations are not challenged and therefore, he was inclined to believe them. But the fact remains that no hearing was given to the Petitioners before making aforesaid observations. Said observations are expunged from the order. Rest of the order, however, is confirmed. Writ Petition is allowed in the above terms and is disposed of accordingly.

V.M. KANADE, J.